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MEMORANDUM

TO: Board of Directors  
Bar Association of San Francisco

FROM: Judiciary Committee

SUBJECT: Report on Candidates in Contested Judicial Elections

DATE: April 18, 1990

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Under the by-laws of the Association, the Judiciary Committee consists of 21 members appointed for three-year staggered terms by the President of the Association; the president-elect serves as a 22nd member. The membership represents, by race, gender, and ethnicity, a cross section of the legal community, comprised of lawyers from the private and public sectors, including criminal prosecution and defense attorneys, corporate counsel, sole practitioners and members of small, medium and large law firms. Most of the members have had broad courtroom experience, and all have a firm understanding of the qualifications required for judicial office.

With respect to review of candidates in contested judicial elections, upon recommendation of the Judicial Review Committee and the Ad Hoc Committee to Study Judicial Evaluation, the BASF Board voted on February 28, 1990 to replace the BASF membership plebiscite in favor of a thorough evaluation of each candidate by the existing Judiciary Committee. The Association's by-laws were amended to delete the section on plebiscites and provide for Judiciary Committee investigation and evaluation of all

candidates in Superior and Municipal Court elections. Attached is a copy of Article IV of the by-laws, as amended.

Thereafter, chaired by Acting Chair Amitai Schwartz, the Committee began its evaluation of candidates for the contested judicial offices in San Francisco County for the election scheduled for June 5, 1990.

The Committee was divided into 12 subcommittees, each respectively assigned to one of the twelve candidates, and each designed to be constituted of members of diverse personal and professional backgrounds. Each subcommittee had three members, and one member of each subcommittee was designated as subcommittee chair. The subcommittee chairs organized the subcommittees and performed other functions to assist in the preparation of the subcommittees' reports to the Committee as a whole.

The entire Committee met on several dates to review subcommittee reports and to interview and evaluate candidates. In accordance with the by-laws, a quorum was in attendance at each meeting.

Twelve candidates for Superior Court and Municipal Court offices were evaluated.

#### Evaluation Standards

In accordance with the by-laws, the Committee evaluated the candidates to be, in its opinion, "qualified", "well qualified", "exceptionally well qualified", "not recommended for election at

this time", "not qualified", or "no action". These standards are described in the by-laws as follows:

"In determining the qualification of candidates for judicial office, the members shall vote to assign one of the categories defined below to the person evaluated:

(1) 'Qualified' -- meaning that the candidate possesses the following attributes so as to indicate the ability to satisfactorily perform the judicial function for which she or he is being considered: integrity and character; judgment and intellectual capacity; professional experience; industry and diligence; judicial temperament, including whether the candidate would be courteous and considerate of counsel, parties, witnesses and jurors, and whether the candidate is even-tempered; decisiveness; ability to transcend personal biases; professional ability and knowledge of the law; health; general reputation in the community; civic and community activities.

(2) 'Well Qualified' -- meaning that the candidate possesses all the attributes required for a rating of 'Qualified' and possesses one or more of those positive attributes to such a high degree as to be indicative of superior fitness to perform the judicial function for which he or she is being considered.

(3) 'Exceptionally well qualified' -- meaning that the candidate possesses all the attributes required for a rating of 'Well Qualified' and possesses several or all of those

positive attributes to such an extremely high degree to be indicative of exceptional fitness to perform the judicial function for which she or he is being considered.

(4) 'Not Recommended for Election at this Time' -- meaning that the candidate lacks one or more of the attributes required for a rating of 'Qualified' at the time of evaluation but that the Committee considers the deficiency capable of correction in the future, e.g., lack of experience.

(5) 'Not Qualified' -- meaning that the candidate lacks one or more of the attributes required for a rating of 'Qualified' to such an extent that the Committee doubts the candidate's fitness to perform satisfactorily the judicial function for which he or she is being considered.

(6) 'No Action' -- meaning that a majority of the Committee consisting of at least eight members has been unable to assign one of the other categories to the candidate.

These standards necessarily contemplate a qualitative evaluation culminating in an expression of the Judiciary Committee's considered opinion as to the candidate's present ability to serve as a judge for the court to which he or she seeks election. The standards are, therefore, very different from the eligibility provisions of the California Constitution, which merely require membership in the State Bar or service on a

court of record for five years (Municipal Court) or ten years (Superior Court).

#### Evaluation Procedure and Investigation

In discharging its responsibility, the Committee complied with its by-laws as follows:

1. A letter describing the Committee's work was sent to each candidate along with a Personal Data Questionnaire. Each candidate was asked to complete and return the Personal Data Questionnaire and all did so. Candidates were asked to supply names and current addresses of lawyers and judges who could evaluate the candidate's legal skills and knowledge.

2. The subcommittees thoroughly reviewed the Personal Data Questionnaire for the candidate they had been assigned and then resorted to other sources to obtain additional information concerning the candidate's qualifications for judicial office, including judges, lawyers and other persons considered to be knowledgeable about the candidate's qualifications. Subcommittee members and the Questionnaires specifically inquired into the attributes set forth above, as contained in the by-laws. Numerous inquiries were made about each candidate. Reports of negative qualities were followed up to make sure whether and to what extent the reports had substance and reflected broadly held opinion as opposed to isolated instances or personal reactions peculiar to the person responding.

3. Each subcommittee reported its findings on the

candidate whose qualifications it had reviewed to the full committee at one of a series of full Committee meetings. All members of the full committee were also provided with each candidate's written response to the Personal Data Questionnaire. Committee members supplemented the investigations of the subcommittees by exchanging information on each respective candidate within the full Committee in order to take advantage of the broad base of knowledge, background and experience of the entire membership.

4. Following a full discussion of all information available to the Committee pertaining to a particular candidate, the candidate was personally interviewed by the full Committee.

5. After a full discussion of the candidate's qualifications, the Committee's considered opinion as to the qualifications of the candidate for the position sought was determined in accordance with the by-law categories as set forth above.

#### Confidentiality

In accordance with the by-laws, all investigations and proceedings of the committee and its subcommittees are treated as confidential. The need for confidentiality was stressed at each meeting of the Committee and in memos to its members.

#### Evaluations

The Committee firmly emphasizes that it has limited evaluations only to its considered opinion as to the candidates' present qualifications for the particular judicial offices they

seek. The evaluations do not purport in any way to reflect upon any candidate's qualifications for any other office or upon any candidate's competence as a practicing attorney or in any other endeavor. The evaluations of the Judiciary Committee of candidates for Superior Court are limited to the Committee's considered opinion as to the qualifications of the candidates with respect to that office only; the evaluations of candidates for Municipal Court are limited to the Committee's considered opinion as to the qualifications of candidates with respect to that office only.

#### SUPERIOR COURT EVALUATIONS

Having completed its investigations and deliberations and all procedures required of it by the governing by-laws, the Judiciary Committee reports its opinions as to the qualifications of the candidates for the following Superior court offices (the occupations listed after the candidates' names are as they will appear on the ballot):

#### SUPERIOR COURT DEPARTMENT NO. 3

J. Dominique Olcomendy -- Well Qualified  
Judge, Municipal Court

Alex Saldamando -- Well Qualified  
Judge, Municipal Court

#### SUPERIOR COURT DEPARTMENT 5

Carlos Bea -- Well Qualified  
Incumbent

Ksenia "Kay" Tsenin -- Not Qualified  
Attorney

SUPERIOR COURT DEPARTMENT 15

Jerome T. Benson -- Qualified  
Incumbent

Donna Hitchens -- Qualified  
Attorney

MUNICIPAL COURT EVALUATIONS

Having completed its investigations and deliberations and all procedures required of it by the governing by-laws, the Judiciary Committee reports its opinions as to the qualifications of candidates for the following Municipal Court offices (the occupations listed after the candidates' names as they will appear on the ballot):

MUNICIPAL COURT DEPARTMENT NO. 1

Ellen Chaitin -- Qualified  
Attorney

James Harrigan -- Exceptionally Well Qualified  
Legal Counsel, San Francisco  
Sheriff's Department

William J. O'Connor -- Not Qualified  
Attorney

Julie Tang -- Well Qualified  
Assistant District Attorney

MUNICIPAL COURT DEPARTMENT NO. 3

Jerome A. DeFilippo                    -- Not Qualified  
Attorney

Lillian K. Sing                        -- Exceptionally Well Qualified  
Incumbent

EVALUATIONS OF "NOT QUALIFIED"

The Committee stresses that its evaluation of a candidate as in its opinion "Not Qualified" for a particular judicial office at this time does not reflect upon and is not an evaluation of the candidate's qualifications for a different office, as a practicing attorney, or in any other endeavor. In addition, the Committee does not intend by these evaluations to bind any future Committee involved with the evaluation of any of these candidates for the same or any other public offices.

CONCLUSION

The Judiciary Committee respectfully submits this report hoping it will be a source of information for the voters of San Francisco and will assist in selecting qualified and able judicial officers in the forthcoming elections. The report collectively represents an enormous expenditure of time expended over a six week period of time. The Committee believes the time investment was made to ensure a quality evaluation and represents a commitment by the Committee to the administration of justice.

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